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No. 81-2254

In the Supreme Court of the United States

October Term, 1981

RALPH H. GELVIN

Petitioner,

vs.

STATE OF NORTH DAKOTA

Respondent.

RESPONSE TO A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

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STATEMENT OF THE CASE

The respondent agrees that the facts of the case are as set forth by the petitioner except that the petitioner has failed to note that the small piece of paper that was seized in this case was found lying loose between the folds of Gelvin's wallet during the jailhouse search. The decision of the North Dakota Supreme Court took notice of that fact. (State v. Gelvin, 318 N.W. 2d 309 (N.D. 1982) and Appendix, p. A.2)

REASONS FOR DENYING WRIT

I. THERE IS NOT SIGNIFICANT CONFLICT OR CONFUSION BETWEEN THE STATES AND THE FEDERAL CIRCUITS AS TO THE SCOPE OF THE JAILHOUSE INVENTORY SEARCH EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT.

This case involves the search of a detainee's wallet at a jail pursuant to the inventory search exception to the warrant requirement of the Fourth Amendment. It is important to note that in making its decision, the North Dakota Supreme Court noted that the small piece of paper which was seized, was found lying loose between the folds of the wallet. State v. Gelvin, 318 N.W. 2d 302, 304. (See Appendix to Petition for Writ of Certiorari, p. A10)

The petitioner has cited numerous cases and argues that those cases demonstrate the existence of a conflict between the states and the federal circuits as to the nature and scope of jailhouse inventory searches. In fact, a careful reading of those cases does not support the petitioner's contention. The petitioner cites a number of cases to demonstrate that some states have restricted the scope of the jailhouse inventory. Those cases either are based on state constitutions or deal with searches incident to arrest or automobile inventory searches. The petitioner does not cite a single state court decision which would disallow the search of a wallet during a jailhouse inventory search on federal constitutional grounds.

The petitioner places great reliance on Reeves v. State, 599 P. 2d 727 (Alk. 1979) which the petitioner correctly reads as adopting a very restrictive scope for jailhouse inventory searches. In that case, however, the Alaska Supreme Court noted at 599 P. 2d 734:

It is not at all certain that the United States Constitution, as presently construed, places any significant limitations on the scope of an inventory search conducted pursuant to a custodial arrest.

The court went on to analyze and delineate the scope of a jailhouse inventory search in the framework of the guarantees of the Alaska State Constitution, which the court held to have a broader guarantee against unreasonable searches and seizures than that of the Fourth Amendment to the United States Constitution.

Likewise, the petitioner claims the State of Hawaii is particularly restrictive in the scope allowed in inventory searches. In State v. Kaluna, 520 P. 2d 51 (Hawaii, 1974) the Hawaii Supreme Court held that both the scope of jailhouse inventory searches and the scope of searches incident to lawful arrest were narrower under the State Bill of Rights than would be allowed by the Federal Bill of Rights.

The petitioner also argues that the State of Illinois is restrictive in the scope of jailhouse inventory searches. In support of that contention he cites People v. Redmond, 390 N.E. 2d 1364 (Ill. 1st Dist. 1979) which deals not with a jailhouse inventory search, but with a search incident to arrest. In that case it was held that a search of a defendant's purse which was recovered from the street after the defendant was handcuffed and seated in the backseat of a squad car could not be justified as a search incident to a lawful arrest. The petitioner also cites People v. Bayles, 411 N.E. 2d 1346 (Ill. 1980). That case deals specifically with inventory searches of containers taken from vehicles. In that case the Illinois Supreme Court, relying on United States v. Chadwick (1977), 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed. 2d 538, and Arkansas v. Sanders (1979), 422 U.S. 753, 99 S.Ct. 2586, 61 L.Ed. 2d 235, held at 411 N.E. 2d 1352:

> A warrant is generally required for the search of luggage or any container of personal effects. The warrantless search of such a container, therefore, will be deemed unconstitutional unless it can be justified under an established exception to the warrant requirement. The mere fact that the container is found in a vehicle or is seized subsequent to an arrest based upon probable cause will be insufficient to bring the warrantless search within the automobile exception or the search-incident-to-an-arrest exception.

While such a conclusion may reasonably have been drawn at the time Bayles was decided, it should be noted that on June 1, 1982, in United States v. Ross, No. 80-2209 (31 Cr. L. 3051) this Court held:

> When a legitimate search is underway, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest of prompt and efficient completion of the task at hand.

This Court went on to note:

> [T]he protection afforded by the (Fourth) Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at random by a customs officer; the luggage may be searched no matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest may often be searched without a warrant and even without any specific suspicion concerning its contents.

In State v. Hall, 279 S.E. 2d 111 (N.C. App. 1981), cited by the petitioner, a North Carolina Appellate Court limited

the scope of an inventory search of a vehicle and relied, in part, on the District of Columbia District Court decision in United States v. Ross, supra, which was reversed by the U.S. Supreme Court on June 1, 1982.

The decisions limiting the scope of automobile inventory searches cited by the defendant rely on United States v. Chadwick, supra, and Arkansas v. Sanders, supra. In Sanders this court had hinted that warrantless search of a container found in an automobile could not be upheld as part of a warrantless search of an automobile itself. That determination, however, has been done away with in U.S. v. Ross, supra, and it is the contention of the respondent that those cases would be decided differently today in light of the Ross, supra, decision.

The defendant has failed to demonstrate a conflict between state courts concerning the scope of jailhouse inventory search. While both Alaska and Hawaii have restricted the scope of such searches, they have done so on state constitutional grounds. One case cited as limiting the scope of such searches is a search incident to arrest case and the others deal with automobile inventories and not jailhouse inventories.

The petitioner has also failed to demonstrate a conflict between the Federal Circuits. He cites United States v. Bloomfield, 594 F. 2d 1200 (8th Cir. 1979) and concludes that under the reasoning set forth in that case, the search of a wallet during a jailhouse inventory would be permitted. The petitioner then cites United States v. Monclavo-Cruz, 662 F. 2d 1285 (9th Cir. 1981) in which it was held that a purse could not be searched during a jailhouse inventory search. The court in Monclavo-Cruz specifically noted, however, that the scope of a jailhouse inventory search could include the search of a wallet.

II. THE INVENTORY SEARCH OF GELVIN'S WALLET AND THE SEIZURE OF THE ALLEGED CONTROLLED SUBSTANCE THEREIN, WAS A REASONABLE SEARCH AND SEIZURE.

This case involves the search of Gelvin's wallet at a jail pursuant to the inventory search exception to the warrant requirement of the Fourth Amendment. As stated by the petitioner, the principle of the inventory search was first set forth by the United States Supreme Court in the case of South Dakota v. Opperman, 428 U.S. 364, 49 L.Ed. 1000, 96 S. Ct. 3092 (1964). The grounds for such an inventory are:

1. Protection of the detainee's property while it remains in police custody.
2. Protection of the police against claims and disputes over lost and stolen property.
3. Protection of the police from potential danger.

In United States v. Lipscomb, 435 F. 2d 795 (5th Cir. 1970) the Court of Appeals for the Fifth Circuit held:

> It cannot be denied that to prevent escape, self-injury, or harm to others, the police have a legitimate interest in separating the accused from the property found in his possession. An inventory is then necessary both to preserve the property of the accused while he is in jail and to forestall the possibility that the accused may later claim that some item has not been returned to him.
>
> Lipscomb at 800.

In State v. Entsminger, 160 N.W. 2d 480 (Iowa, 1968) the Iowa Supreme Court held:

> The question is whether in all the circumstances of this 'booking' process defendant's right to personal security was violated by an unreasonable search and seizure . . .
>
> This is standard and necessary under modern police practice which calls for a thorough search at the station house of any person who is taken into custody. Such searches are not unreasonable; they are an integral part of efficient police procedure. These circumstances rendered initiation of the search and seizure permissible to the extent used here. The scope of this search was strictly tied to and justified by this 'booking' procedure.
>
> Entsminger, at 483-4.

In Warrix v. State, 184 N.W. 2d 189 (Wis. 1971) the Wisconsin Supreme Court found that custodial inventory search was reasonable, if it bore a reasonable relationship to jail custodial purposes. The Court held:

> [T]his court . . . has upheld a custodial search of the person on the ground it was required for the safety of the prisoner and the law enforcement officers and by the efficient operation and administration of a jail. Such custodial serach after arrest must bear a reasonable relationship, not to arrest, but to jail custodial purposes and one of the custodial requirements is the inventorying of possessions belonging to the accused and placing them in safekeeping during his custody in jail. If contraband or evidence or fruits of a crime are found in this process, the discovery does not make the search unreasonable. (citation omitted)
>
> Warrix, at 194.

In People v. Walker, 228 N.W. 2d 443 (Mich. 1975) the Michigan Supreme Court considered a case in which a tinfoil packet was taken from a defendant during an inventory

search and opened. The court held at 228 N.W. 2d 446:

> The subsequent opening of the packet does not remove this particulary search from the protective scope of the jailhouse inventory exception to the warrant requirement. It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying. (emphasis added)

In the case now before the court, the small piece of paper taken from Gelvin's wallet was lying loose in the folds of the wallet, and was the type of item (like currency or credit cards) which could easily have been lost had an inventory search not been performed. The North Dakota Supreme Court limited its decision in this case as follows:

> Although we express no opinion as to the propriety of closed or locked containers in general, we hold that it was proper for the officers in this case to inventory the contents of Gelvin's wallet.
>
> State v. Gelvin, 318 N.W. 2d 302, 305.

For those reasons, should the court determine there is some need to review the scope of jailhouse inventory searches, the present case is a poor case for such a review.

CONCLUSION

There is not significant conflict between various state courts as to the scope of jailhouse inventory searches, nor does such a conflict exist between the Federal Circuits.

Jailhouse inventory searches are reasonable and necessary to protect a detainee's property while it remains in police custody, to protect the police against claims and disputes over lost and stolen property and to protect the police from danger. The scope of such searches must be such that those purposes can be accomplished and limiting peace officers from searching a wallet, particularly a wallet with items loose in the folds, would defeat those purposes.

For the reasons stated above and upon the basis of the cases cited herein, the respondent respectfully asks that Writ of Certiorari be denied.

Dated this 26th day of August, 1982.

/s/ John M. Olson

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CERTIFICATE OF SERVICE

The foregoing Response to a Petition for a Writ of Certiorari was served by mailing a true and correct copy thereof to:

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and same having been placed in the United States Mail with sufficient postage affixed, this 26th day of August, 1982.

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